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ABSTRACT

The purpose of licensing is to provide protection in circumstances in which people are vulnerable and to mandate that positive services will be provided. The common denominator of human vulnerability in licensed children's services is the fact that the children are in the care of someone other than their families. Licensed services include family day care homes, day care centers, child placing agencies, family foster homes, and child care institutions. Licensing mandates a basic level of quality because it is the floor below which it is not legal to operate. Licensing is selective in that it usually follows children who are placed by public agencies or children whose care is paid for by public agencies. Licensing also increases following tragedies and scandals that receive public attention. Strong arguments exist for administering licensing at the state level, but state level licensing means that there is variation in standards from state to state. Licensing for child placing agencies has been one of the least effective areas. In all kinds of licensing, multiple forms of protection are needed, i.e., credentialing of individuals, program accreditation, and parent involvement (especially in day care). Licensing, like any form of regulation, may interfere with the rights of persons who wish to carry out a certain enterprise, but society has a legitimate interest in protecting the welfare and rights of children. (CB)

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LICENSING OF CHILDREN'S SERVICES

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LICENSING OF CHILDREN'S SERVICES

Licensing of children's services is an established part of America's system of protecting its citizens. The first legislation of this type was enacted in Massachusetts in 1863 when the state legislature mandated inspection of public and private institutions in which children and adults received care. However, Pennsylvania actually was the first state to pass a licensing law (in 1885). These were soon followed by other states, eventually reaching every state. Strong support for state licensing was given at each of the White House Conferences beginning with the first one called by President Theodore Roosevelt in 1909.

The purpose of licensing is to provide protection in certain circumstances where there are vulnerable people and to mandate that positive services will be provided. The common denominator of human vulnerability in licensed children's services is that the children are in the care of someone other than their families. These licensed services are commonly referred to as day care including both family homes and centers, child placing agencies, family foster homes and child care institutions. Licensing of children's services does not include licensing of individuals within occupational categories such as marriage counseling or medical services, even though some individuals working in those programs may have occupational licenses.

Licensing is a legally enforced quality control process. While quality control in licensing does not measure the quality of outcomes or products, as it does in manufacturing, it does

measure the quality of the resources and methods by which the process is carried out. Licensing mandates a rather basic level of quality rather than a high level, because it is the floor below which it is not legal to operate. Licensing is a reflection of the values that society places on its children. Licensing laws and rules are not statements of philosophy and values, but they are very directly built upon them.

As a Response to Problems

While the rhetoric of licensing espouses a positive concern for children and their best interests, a careful look at patterns of licensing does not bear this out. One might expect that licensing would be applied to the categories of service in which children are vulnerable, i.e., placed by someone other than a parent or in the care of someone other than the parent. However, this does not occur consistently. Rather, licensing follows children who are placed by public agencies, and/or children whose care is paid for by public agencies. This pattern raises the troubling question of who is being protected. There may be an inclination on the part of many to be in favor of law and order, but its appeal appears to be in its application to someone else. Organizations that have been successful in being exempted from licensing are public agencies in approximately half the states and certain religious and fraternal organizations in a few states.

A related pattern is that licensing does not remain stable over extended periods of time in individual states. Strong licensing follows tragedies and scandals that receive public attention. Once licensing is strengthened and abusive conditions are controlled, the positive aspects of licensing invariably are

forgotten by persons who make funding decisions, with the result that licensing is deemphasized, and the cycle begins all over again. Even though the current wave of child abuse may be caused by many factors, there can be no doubt that there is a connection between the fact that state licensing is the weakest that it has been in decades. The primary reason for this is that day care services have proliferated during recent years, and the quantity of licensing staff has not kept pace with them. In fact, fiscal problems of states sometimes lead to reductions in staff as well as reductions in other positive features such as licensing staff training--despite increases in day care services.

The Administrative Base

The question of what is the preferred level of jurisdiction in which licensing operates is raised occasionally. The state level has the blessing of precedent and tradition. It also has solid arguments in its favor. Licensing currently is an expression of the police powers of the state and lends itself well to the process and enforcement structure of the executive branch of state government. Administering licensing from the federal level would be a gigantic logistical complexity. It would also require nationwide consensus on virtually all changes, thereby increasing rigidity. Differences among individual states could not be accommodated. The other extreme would be licensing by individual counties or municipalities. This would create an unlimited variety of licensing programs, and no doubt none at all in some communities; a fundamental principle of state licensing is fairness and statewide consistency. Program operators in one part of the state have a

right to know that they will be held to the same requirements and licensing procedures as those in other parts of the state. Children in care also are entitled to the same protections. The lack of consistency not only makes enforcement exceedingly difficult, it contradicts the universality of children's needs.

An argument could be made for the concept that a small core of licensing requirements for each state should be the same nationwide. Development of model state licensing materials on a national level for voluntary state use tends to have the same effect.

Characteristics

Licensing varies considerably from state to state. The variations are in the licensing law, the licensing rules (regulations) and in their implementation, including the quality of staff. Nevertheless, there are some common characteristics that run through virtually all state licensing. Several of the major ones follow.

First, licensing always is based on state law, which provides the authority and sets the parameters for licensing. The state licensing law defines the universe to be licensed, designates the department responsible for carrying it out and provides enforcement powers, appeal procedures and penalties.

Second, licensing requirements, which are state administrative rules, specify what is required of anyone to be eligible for a license for a given type of service such as day care centers and homes, child placing agencies and family foster homes. Licensing rules have the force of law for either an

applicant for a license or license holder, as long as that party is interested in having the license. Licensing rules are not enforced on third parties.

Licensing rules mandate a basic quality level of care. They consist of mandates and prohibitions that an individual or organization must comply with to qualify for a license. They are promulgated by the state agency, but developed with the cooperation of a variety of persons interested in the regulated services. Licensing rules are perhaps the nearest thing to a public policy on children that a state has.

The fact that licensing rules apply only to an applicant for a license or a licensee has implications for the question of whether all individual family homes should be licensed or if the placement agency that supervises the care of children in them should hold them to mandated requirements. In a large majority of states, family foster homes are licensed individually as well as the child placing agency. Day care "placement," or information and referral centers also are now emerging. In ideal circumstances, having the central agency take full responsibility, which includes enforcement of requirements, would be the most efficient. Some potential issues, however, are that determination of compliance is only as good as the agency doing it, and such arrangements may reduce consistency. Second, penalties for noncompliance with rules would fall on the agency rather than on the violating party since only the agency would be licensed. A key factor here is that private family homes are not administratively or legally a part of the child placing agency and are not administratively accountable to it.

The third significant characteristic affecting the way licensing is carried out is the operational policies of licensing. This includes such matters as frequency of licensing visits, thoroughness of licensing studies, the type of reports submitted, priorities, including whether emphasis is placed n compliance determination or on response to complaints, and whether consultation is provided by licensing staff.

Fourth, and in specific instances sometimes the most important characteristics are the qualifications of licensing staff. The ideal profile is a person who has academic training and direct experience in the service regulated and also knows the licensing process well. A sound understanding of the service regulated, e.g., day care or foster care, is essential for enforcing licensing rules for those services in ways that are the most helpful and also the least damaging to the program. This also makes it possible to provide quality consultation, which most providers value.

Fifth, licensing staff need administrative backing from their own organizations as they carry out the mandates of laws, rules, and state agency policies. Administrative backing also must include legal counsel and representation when needed.

The sixth characteristic is statewide consistency. To be fair and enforceable, licensing must be carried out consistently. This includes the way decisions are made, particularly interpretation of rules relative to specific circumstances. The four major elements needed to achieve consistency are central administration, licensing that is "free standing," clear policies and staff training. Central administration exists when all state staff who license a particular

kind of service are accountable to a central unit in the agency rather than to various administrators who also may be responsible for many other services. Central administration is not feasible for the licensing of family homes in most states because of the sheer volume of such homes.

Licensing units that are "free standing" are administratively located in units separate from units that operate direct services. The purpose is to reduce pressures that would compromise licensing because of greater concern about other agency operations. Physical proximity to staff of other services is advantageous for increasing communication and understanding, but administrative proximity is not.

Clear licensing policies and procedures increase staff efficiency and also increase their consistency with other staff as well as with themselves over extended periods of time.

Training has the same general purpose as clear policies, and is the process through which policies are learned and assimilated by staff. It also goes beyond policies to understand all aspects of licensing. Training content for licensing staff includes the licensing process and the services regulated.

The seventh characteristic is provision of consultation. If licensing staff have had education and training in provision of direct services, and through licensing become acquainted with a number of licensed programs, they invariably become a repository of information that is extremely valuable to service providers. Although licensing staff always must keep their regulatory and consultative roles clear, they have abundant opportunity to assist service providers to improve their programs. Consultation may deal with alternate ways of coming into compliance with

rules, with improving the quality of programs about required levels, or with matters unrelated to licensing rules. Consultation not only may improve programs, it also can positively affect the licensing process because it encourages providers to reach levels of excellence above requirements; when such interest exists the incidence of rule compliance also tends to be higher.

Licensure of Child Placing Agencies

The licensing of child placing agencies has been one of the least effective areas of licensing. This has no doubt contributed to the fact that child placing services have been one of the weakest areas of child welfare. There are four reasons for this:

First, licensing generally is associated with child care rather than with the placement process. This is in spite of the fact that case decisions made by child placing agencies more profoundly affect children and their families than child care institutions and family care providers, and they often are made before the child enters the care. The Adoption Child Welfare Act of 1980, PL 96-272 makes no mention of licensing child placing agencies.

Second, the child welfare field still has not clearly conceptualized and articulated the role of child placement agencies, particularly as they relate to children placed in child care institutions. Licensing is more readily applied to programs that are understood fairly well.

Third, The tangible aspects of child care are easier to measure than the services of child placing agencies. This makes such licensing more attractive to some state staff.

Fourth, most placements of children into foster care is done by public agencies, which are the least regulated by licensing. This is beginning to change as licensing of public agencies is gaining acceptance.

Most of the aspects of permanency planning that can be incorporated into licensing are applicable to licensure of child placing agencies, rather than to child care institutions and family foster homes. A great deal of work needs to be done in this area.

Section 472 of PL 96-272 authorizes use offederal funds for foster care including family foster homes, private child care institutions "or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standard established for such licensing." This clearly means that where a state uses an "approval" process rather than licensing, the approval process must use the same licensing requirements that the state uses for licensing private child care institutions. If application of the requirements is to be done consistently, it must be done by the same staff who license private child care institutions.

Other Forms of Regulation

Even though licensing affords a very significant degree of protection it is not in itself sufficient. Other protective processes also are necessary. This includes placement agency services when agencies make placements or assist parents in doing so. Public agency purchase of services, contracting and

monitoring, and protective services also provide strong protections. The most significant overall force, however, particularly in day care, are the parents of the children. When parents inform themselves of the basics of quality care and make a point of carefully observing programs and discussing them with the service providers they can exert a powerful influence. In some instances, however, parents are notable or perhaps not interested in doing this. In many states licensing staff provide materials to parents to help them to be more informed and careful users of service.

Other activities similar to licensing in some respects may also positively impact services. These are credentialing (registration, licensing, or certification) of individuals who work in programs, and program accreditations. Some credentialing of specific occupation/professional activities is required by law, and some is voluntary. Accreditation of programs is voluntary although, in some, instances it may be a prerequisite for a higher payment rate. Accreditation generally is designed to help programs reach a high level of quality.

Conclusions

While licensing is a significant force in protecting children, it also has limits. It cannot guarantee that the required levels of safety and quality will be maintained at all times. The two major positives of licensing are that it enforces conditions in which the likelihood of safety and positive programs are increased, and also that when abuse or non-compliance are noted licensing is able to bring about corrective action.

The answer to the question of whether licensing strengthens or usurps the role of the children's families depends primarily on the licensing rules and policies of each state. In general, however, licensing places strong emphasis on parents' rights, family participation and parent/child relationships. When licensing staff and program operators are in conflict on matters of parent involvement and responsibility, it nearly is always because program operators are limiting parental involvement, and licensing then comes down on the side of families.

One of the fundamental questions of licensing, since it is a form of regulation, is whether it interferes with the rights of persons who wish to carry out a certain enterprise, as well as the rights of parents of children. There is no question of its potential for interference, depending somewhat on the manner in which it is carried out. However, the rights of any involved party must be viewed in the context of the rights of children. Generally they have no control over where they are placed or how they are treated. The rights of individuals to carry out an activity would not be a matter of official public interest if it were not for the fact that the activity impacts persons who also have rights and may be totally vulnerable. Society has a legitimate interest in its own future relative to the care that its children receive. In this respect, the issue is not entirely whose child it is because positive and negative consequences ultimately accrue to the larger society. As Carl Sandberg noted, "There is only one child in the world. That child's name is all children."

Permanence

1. Are parents involved in the decision to remove the child? To place the child? - Where to place the child?

2. Are children placed close enough to their families for on-going family contact?

3. Are children (normally) placed within the State?

4. Are children (normally) admitted into care only from within the State?

5. Does the case plan include on-going family contact?

6. Does the case plan include on-going contact with any person who is important to the child?

7. Does the initial case plan have family reunification as a goal?

8. Is the case plan direction clear within three months?

9. Is the case plan always subject to modification?

10. Are the case goals clear and understood by child, by the parents, by the placement agency worker, by the foster parents or the institution caseworker and child care staff?

11. Do the parents understand their part in the case plan?

12. Is it clear who has primary responsibility for helping the family, the placement agency, or the child care institution?

13. Are the placement agency's case plan, and the child care institution's service, or treatment, plan synchronized?

14. Are case reviews attended by staff of both the placement agency and child care institution? By foster parents?

15. Can parents count on the threshold for removal and return being the same?

16. Are there pre-placement visits?

17. Do parents participate in the placement?

18. Are parents encouraged to visit as soon as possible after the placement?

19. Does the placement agency worker visit children in child care institutions at least quarterly, - monthly in family homes?

20. Are the parents feelings about the separation discussed with them?

21. Do staff (or foster parents) help parents to feel welcome?

22. Do staff (or foster parents) uphold the parents to the child, and the child to the parents?

23. Are parents encouraged to visit in family foster homes?

24. Are life books encouraged and updated?

25. Are groups homes, or child care institution living units limited to ten or fewer children?

26. Administrators, do you treat your staff as positively as you want them to treat the children?

27. If children move from one foster home to another can they maintain contact with any previous ones?

28. If children leave foster care to adoptive homes can they maintain established relationships?

29. When children move are they given names, addresses and telephone numbers of past care-givers?

30. When "permanent" family foster care is used, does it convey the concept of lifetime family relationships?

31. If children are adopted after infancy is further contact with their birth family ever permitted?

32. If families drop away and adoption is not feasible are children linked up with foster grandparents?

33. Are children given sufficient lead time before they are released from care to work through the change in their lives?

34. Do staff attempt to locate relatives of children scheduled for release, to give information about them to the children, and to inform the relatives of the children's status?

35. When it is expected that children to be released will re-enroll in school, do staff contact that school and be sure that school receives a report of the child's school progress?

36. Is after-care service always provided?

37. Does the agency give preference to readmitting children who have been there before, when they need it?

38. Are children permitted to return for visits after leaving?

39. Do staff respond, as able, to children who want to stay in touch with them?

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